REMARKS

Claims 3, 5, 6 and 10-19 are pending in the subject application. Applicants respectfully submit that the present response places the present application in condition for allowance or in better condition for purposes of appeal. No claims have been amended or added, and no new matter has been added to the application by virtue of the present response. Applicants believe that the present response does **not** raise new issues requiring further search by the Examiner.

Non-Statutory Obviousness-type Double Patenting

The Examiner provisionally rejected claim 10 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 9 of co-pending U.S. patent application serial no. 10/065,808. Likewise, in co-pending U.S. patent application serial no. 10/065,808, claim 9 has been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 10 of the present application.

Applicants believe that the remarks discussed herein below overcome the claim rejections under 35 U.S.C. 102(e) and 35 U.S.C. 103(a). Thus, Applicants believe that the only remaining claim rejection will be the non-statutory obviousness-type double patenting (ODP) rejection of claim 10.

The present application and co-pending U.S. patent application serial no. 10/065,808 were filed on the same day. As per MPEP 804.I.B.1, the Examiner "... should determine which application claims the base invention and which application claims the improvement (added limitations). **The ODP rejection in the base application can be withdrawn without a terminal disclaimer**, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer." (emphasis added) Applicants respectfully submit that the present application is the "base application" since, as the Examiner expressly states in the

Final Office Action on page 3, claim 10 is broader in scope than claim 9 of co-pending U.S. patent application serial no. 10/065,808. Thus, Applicants respectfully submit that the ODP rejection in the present (i.e. base) application should be withdrawn without a terminal disclaimer.

Therefore, Applicants believe that the provisional non-statutory obviousness-type double patenting rejection has been overcome.

Claim Rejections - 35 U.S.C. 102 (e)

The Examiner has rejected claims 10, 11, 14 and 16-18 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,980,513 (Novick).

Applicants' claimed invention includes queue scheduling mechanism 10 which comprises a queue scheduler 20 and several queue devices 12, 14, 16 and 18 which are associated with priority ranks P_0, P_1, P_2 and P_3 (see, for example, **FIG.** 1 and paragraphs [0022]-[0029]). All of the priority ranks P_0, P_1, P_2 and P_3 are associated with a specific queue scheduling mechanism 10. Applicants' claimed queue scheduler 20 reads, at each packet cycle, a data packet in one of the several queue devices 12, 14, 16, 18 determined by a normal priority preemption algorithm or the same queue scheduler 20 reads a data packet based on the priority rank provided by credit device 28. In Applicants' claimed invention, regardless of how the priority rank is selected, it is the same queue scheduler 20 that reads the determined data packet.

Applicants' claim 10, as previously presented, recites "... **a** queue scheduler for reading, at each packet cycle, a data packet in one of said queue devices determined by a normal priority preemption algorithm ..." and "... a credit device that provides at each packet cycle a value N defining the priority rank to be considered by **said** queue scheduler, the considered priority rank is selected based on a pre-determined value related to all of said priority ranks which are associated with said queue scheduling mechanism, whereby a data packet is read by **said** queue

scheduler from the queue device corresponding to the priority rank N instead of said queue device determined by the normal priority preemption algorithm." (emphasis added)

Applicants respectfully submit that claim 10 recites that queue scheduler 20 that reads, at each packet cycle, a data packet in one of the several queue devices 12, 14, 16, 18 determined by a normal priority preemption algorithm is the same queue scheduler 20 that credit device 28 provides at each packet cycle a value N defining the priority rank to be considered.

Applicants respectfully submit that Novick does not anticipate, teach or suggest Applicants' independent claim 10, as previously presented, or claims dependent thereupon. Novick discloses two queue schedulers (i.e. high priority scheduler 24 and low priority scheduler 34) with neither queue scheduler associated with both a normal priority preemption algorithm and a credit device as claimed by Applicants. Rather, Novick's high priority scheduler 24 is associated only with MCR list 36 and low priority scheduler 34 is associated only with BE service list 38 (see Fig. 1 and column 4, lines 19-51). Novick is silent on any one of the queue schedulers 24 or 34 being associated with both the MCR list 36 and the BE service list 38.

Applicants respectfully disagree with the Examiner's reading of the Novick reference onto Applicant's claim 10. Referring to the present Final Office Action, page 4, the Examiner states that Novick discloses "... a queue scheduler (**scheduler 34**) for reading ... a data packet ... determined by a normal priority preemption algorithm (**best effort** for **low priority multiplexer 12**)" and "... a credit device (**MCR list 36**) ... defining the priority rank to be considered by **said** queue scheduler ..." (emphasis added). The Examiner identified Novick's low priority scheduler 34 as the "queue scheduler" so "**said** queue scheduler" also refers to Novick's **low** priority scheduler 34 based on proper antecedent basis for claim structure. However, Applicants believe that the Examiner's characterization of the MCR list 36 of Novick defining the priority rank to be considered by "**said** queue scheduler" (i.e. low priority scheduler 34) is not correct. Novick does

not associate MCR list 36 with low priority scheduler 34 as the Examiner alleges, rather, Novick states that high priority scheduler 24 is associated with MCR list 36 and that low priority scheduler 34 is associated with Best Effort list 38 (see column 3, lines 36-37). As stated above, Novick is silent on any one of the queue schedulers 24 or 34 being associated with both the MCR list 36 and the BE service list 38.

Applicants respectfully submit that the Examiner has failed to provide any reference which includes each and every element of Applicants' claim 10, as previously presented. Claims 3, 5, 6 and 11-19 are dependent upon claim 10.

Therefore, Applicants believe that the rejection of the claims under 35 U.S.C. 102(e) has been overcome and it is respectfully requested that the pending claims be passed to issuance in view of the amendments and remarks.

Claim Rejections - 35 U.S.C. 103(a)

The Examiner has rejected claims 12-13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,980,513 (Novick) in view of U.S. Patent No. 6,721,273 (Lyon); claims 5, 6, 15 and 19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,980,513 (Novick) in view of U.S. Patent No. 6,438,134 (Chow); and claim 3 as being unpatentable over U.S. Patent No. 6,980,513 (Novick) in view of U.S. Patent No. 6,438,134 (Chow) and U.S. Patent No. 6,721,273 (Lyon).

As discussed herein above, Applicants believe that Novick does not anticipate, teach or suggest independent claim 10, as previously presented. Further, Applicants believe that neither Chow nor Lyon, individually or in combination, do not remedy the deficiencies in Novick. Thus, Applicants respectfully submit that the combination of Novick with Chow and/or Lyon would

not teach or suggest claims 3, 5, 6, 12, 13, 15 or 19.

Therefore, Applicants believe that the rejection of claims under 35 U.S.C. 103(a) has been overcome and it is respectfully requested that the pending claims be passed to issuance in view of the remarks.

CONCLUSION

In light of the foregoing remarks, all of the claims now presented are believed to be in condition for allowance, and Applicants respectfully request that the outstanding objections be withdrawn and this application be passed to issue at an early date.

The Examiner is urged to call the undersigned at the number listed below if, in the Examiner's opinion, such a phone conference would aid in furthering the prosecution of this application. No fees are due by virtue of the present response, however, please charge Applicants' deposit account, 09-0456, for any fee that the PTO determines is due.

Respectfully Submitted,

For: Blanc et al.,

By: _/Anthony J. Canale/_____
Anthony J. Canale
Registration No. 51,526
Agent for Applicants
Phone: (802) 769-8782
Fax: (802) 769-8938
Email: acanale@us.ibm.com

IBM Corporation
Intellectual Property Law - Zip 972E
1000 River Street
Essex Junction, Vermont 05452